



Agenda Date: 3/03/04
Agenda Item: 1A

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

ENERGY AND CLEAN ENERGY

IN THE MATTER OF THE STANDARD OFFER)
NO. 1 AND 2 ENERGY SAVINGS AGREEMENTS)
BETWEEN PUBLIC SERVICE ELECTRIC AND)
GAS COMPANY AND SHERBER ASSOCIATES,)
INC.)

DECISION AND ORDER

DOCKET NO. EE04020066

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated January 26, 2004, Public Service Electric and Gas Company ("PSE&G") petitioned the Board of Public Utilities ("Board") for approval of a Settlement Agreement between PSE&G and Sherber Associates, Inc. ("Sherber"). PSE&G's petition states that the Settlement Agreement resolves a long-standing dispute and results in a proposed buy-out of certain Standard Offer No. 1 and No. 2 projects

Background

This matter stems from the Board's Demand Side Management ("DSM") regulations, N.J.A.C. 14:12-1.1 *et seq.* and the Standard Offer program PSE&G implemented pursuant to Board-approved DSM plans. Pursuant to the DSM regulations in effect at that time, PSE&G filed and received Board approval for its 1992 DSM Resource Plan (including the PSE&G Standard Offer No. 1) and its 1995 DSM Resource Plan (including the PSE&G Standard Offer No. 2). PSE&G and Sherber subsequently entered into Standard Offer No. 1 and No. 2 Energy Savings Agreements ("ESAs"), under which Sherber is the sponsor of Projects Numbered 1268-001 (December 27, 1995), 21268-001 (April 2, 1997) and 21268-002 (July 14, 1997). The energy savings measures in question were installed in buildings of the Edison Township public school district, and facilities of the Tenacre Foundation and International Technidyne Corporation (collectively, "Projects").

Prior and subsequent to the date of commercial operation of the Projects, a dispute arose between PSE&G and Sherber concerning various project issues, including the level of energy savings achieved and the corresponding energy savings payments. This dispute resulted in the filing of a complaint and counterclaims by the parties in a matter entitled Sherber Associates v. Public Service Enterprise Group and Public Service Electric and Gas Company, Docket No. MID-L-10782-98 in the Superior Court of New Jersey, Middlesex County.

During the last several months, PSE&G and Sherber ("the Parties") have engaged in numerous discussions and negotiations to resolve the underlying issues and/or to reach a resolution under which PSE&G would buy out the remaining term of the Projects. Board Staff acted as mediators in some of these discussions. These negotiations led to the execution of the attached Settlement Agreement on January 23, 2004.

Terms of the Settlement Agreement

Under the proposed Settlement Agreement, PSE&G would buy out all three of the ESAs for a lump sum payment of \$1.895 million. The Parties derived this settlement figure as follows:

The Parties agreed that, for settlement purposes, based on reasonable calculations of past energy savings which have not been paid by PSE&G prior to January 2004 and future energy savings likely to be achieved as of January 2004 through the end of the contract terms, the ESAs in aggregate have a gross value of approximately \$2,400,342 over their remaining terms. The gross value consists of approximately \$713,391 in savings potentially achieved through December 2003 that have not been paid by PSE&G and approximately \$1,686,951 in savings potentially to be achieved from January 2004 through the end of the contract terms.¹

The Parties further agreed to discount the \$2,400,342 figure to a net settlement amount of \$1,895,000 in consideration for the settlement of all issues in this matter. This settlement amount includes \$195,000 to reimburse Sherber for administrative and overhead expenses relating to administration of the contracts. The \$1.895 million is a net present value with a discount.

The Settlement Agreement also provides that the Parties will, upon receipt of all sums payable by PSE&G to Sherber, execute mutual releases covering any and all claims regarding their disputes under the ESAs and Projects, excepting any need to enforce the settlement as may prove necessary. The Parties further agreed to execute a stipulation of dismissal dismissing their respective claims in the aforesaid litigation venued in the Superior Court of Middlesex County.

The Settlement Agreement is contingent upon Board approval of PSE&G's recovery of all payments made pursuant to the terms of the Settlement Agreement in PSE&G's rates, through the DSM component of the Societal Benefits Charge or an appropriate successor rate mechanism.

By letter dated February 5, 2004, the Division of the Ratepayer Advocate ("RPA") advised that its staff had met with representatives of both PSE&G and Sherber, and had requested and reviewed further information on the proposed settlement. Based on this review, the RPA states that it does not object to the proposed Settlement Agreement and does not object to PSE&G's recovery of all payments made pursuant thereto in PSE&G's rates, through the DSM component of the Societal Benefits Charge ("SBC") or an appropriate successor rate mechanism. Board Staff met with the Division of the Ratepayer Advocate, PSE&G, and Sherber, at the request of the parties, to discuss the submission of the Settlement Agreement and its placement on the Board's agenda for Board action.

¹ The projects run from the following dates: Project 1268-001 From June 2003 through May 2011; Project 21268-001 From June 1997 through June 2007; Project 21268-002 From June 1998 through May 2008.

Discussion and Findings

The Board has reviewed the terms of the attached Settlement Agreement. Based on its review, the Board HEREBY FINDS that the proposed Settlement Agreement contains terms that will resolve a long-standing dispute between PSE&G and Sherber, including the Superior Court litigation that has been pending for some time. Second, the proposed terms of the buy-out should reduce PSE&G's and its customers' net costs under the three Projects by a meaningful amount, while still providing the benefits of energy savings to PSE&G's customers. Thus, the Board also FINDS that the proposed Settlement Agreement should result in savings to PSE&G's customers of costs that would otherwise be recoverable through the SBC. Furthermore, the energy savings measures for these Projects (which are primarily high-efficiency lighting) will remain in place in the Edison school district and the other host facilities for a number of years. Thus, the Board further FINDS that the host facilities, including the Edison schools, and all of PSE&G's customers should continue to receive energy savings from these measures for a number of years.

Accordingly, based on the foregoing findings, the Board HEREBY CONCLUDES that the Settlement Agreement is in the public interest. Therefore, the Board HEREBY APPROVES the Settlement Agreement. The Board also HEREBY APPROVES and AUTHORIZES PSE&G's recovery of the \$1,895,000 in payments made pursuant to the terms of the Settlement Agreement in PSE&G's rates, through the DSM component of the SBC or an appropriate successor rate mechanism.

DATED: **3/3/04**

BOARD OF PUBLIC UTILITIES
BY:

SIGNED

JEANNE M. FOX
PRESIDENT

SIGNED

FREDERICK F. BUTLER
COMMISSIONER

SIGNED

CAROL J. MURPHY
COMMISSIONER

SIGNED

CONNIE O. HUGHES
COMMISSIONER

SIGNED

JACK ALTER
COMMISSIONER

ATTEST: ***SIGNED***
KRISTI IZZO
SECRETARY

**I/M/O the Standard Offer No. 1 and 2 Energy Savings Agreements Between Public Service
Electric and Gas Company and Sherber Associates, Inc.
BPU DOCKET NO.**

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